

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
BROWN & PIPKINS, LLC D/B/A ACSENTIAL	:	05-CA-130620
	:	
Respondent	:	

APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT
ENFORCING AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Fourth Circuit:

The National Labor Relations Board (the Board), pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its order against Brown & Pipkins, LLC d/b/a Acsential (Respondent). The Board is entitled to summary enforcement of its order because Respondent failed to file an answer to the Board's unfair labor practice complaint and the Board entered an order by default. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor practices occurred in Virginia. The Board's final order issued on December 2,

2014, and is reported at 361 NLRB No. 105.

B. Proceedings Before the Board

1. On August 6, 2014, the Acting Regional Director issued a complaint and notice of hearing in Case No. 05-CA-130620, charging Respondent with certain violations of the Act. The complaint, in part, advised the Respondent that under the Board's Rules (29 C.F.R. 102.20 and 102.21), the Respondent was required to file an answer to the complaint by August 20, 2014, and that if the Respondent failed to file an answer, the allegations of the complaint would be deemed to be true.

2. Having not received an answer, counsel for the General Counsel, on August 28, 2014, sent the Respondent a letter advising that if no answer was received by September 11, 2014, the Board's Regional Office would file a Motion for Default Judgment requesting that all allegations be deemed admitted as true.

3. The Respondent did not file an answer or request an extension of time.

4. On September 16, 2014, the General Counsel filed with the Board a Motion for Default Judgment based upon the Respondent's failure to file an answer to the complaint.

5. By order dated September 18, 2014, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until October 2, 2014,

to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

6. Respondent did not file a response. The allegations of the motion were therefore undisputed.

7. The Board, on December 2, 2014, issued its Decision and Order, granting the Motion for Default Judgment in the absence of good cause being shown for Respondent's failure to file a timely answer, and entering an appropriate order against the Respondent.

C. The Board Is Entitled to Summary Enforcement of Its Order

On these facts, the Board is entitled to summary enforcement of its order against Respondent. Where a respondent in a Board proceeding fails to file an appropriate answer to the unfair labor practice complaint in a timely manner, the Board may, pursuant to Board Rule 102.20, absent a showing of "good cause," deem the complaint's allegations admitted, and then may enter an order, essentially by default, against the respondent. No cause for Respondent's failure to file an answer was alleged or shown here.

It is settled that the Board is entitled to have that default judgment summarily enforced. Under Section 10(e) of the Act (29 U.S.C. § 160(e)), no objection that has not been urged before the Board shall be considered by a court of appeals "unless the failure or neglect to urge such objection shall be excused

because of extraordinary circumstances.” This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting that requirement, courts have consistently held that a respondent’s failure to assert any defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973). No such circumstances have been alleged or shown here.

WHEREFORE, the Board respectfully requests that the Court, after serving notice of the filing of this application on Respondent, enter judgment summarily enforcing the Board’s order in full. A proposed judgment is attached.

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

National Labor Relations Board

1099 14th Street, N.W.

Washington, D.C. 20570

Dated in Washington, D.C.
this 2nd day of June, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
BROWN & PIPKINS, LLC D/B/A ACSSENTIAL	:	05-CA-130620
	:	
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment, appearance of counsel forms, docketing statement, and proposed judgment, in the above-captioned case, has this day been served by first class mail upon the following party at the address listed below:

Deidre F. Brown Collins
Brown & Pipkins, LLC d/b/a Acsential
2950 Stone Hogan Rd, S.W., Bldg 5
Atlanta, GA 30331

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dated in Washington, D.C.
this 2nd day of June, 2015



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

June 2, 2015

Patricia S. Connor, Esquire
Clerk, United States Court of
Appeals for the Fourth Circuit
Lewis F. Powell, Jr. U.S. Courthouse
1100 East Main Street, Suite 501
Richmond, VA 23219-3517

Re: *NLRB v. Brown & Pipkins, LLC d/b/a
Acsential*, Board No. 05-CA-130620

Dear Ms. Connor:

I am enclosing a copy of the Board's application for summary entry of a judgment enforcing the Board's order in this case, and a proposed judgment.

Please serve a copy of the application on Respondent, whose address appears on the service list. I have served a copy of the Board's application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of all correspondence the Court sends to counsel in this case, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570
(202) 273-2960

cc& documents to: Service List

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Brown & Pipkins, LLC d/b/a Acsential and Service Employees International Union, Local 32 BJ.
Case 05-CA-130620

December 2, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND SCHIFFER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charge filed by Service Employees International Union, Local 32 BJ (the Union) on June 10 and 16, 2014, respectively, the General Counsel issued the complaint on August 6, 2014, against Brown & Pipkins, LLC d/b/a Acsential, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On September 16, 2014, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 18, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by August 20, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 28, 2014, notified the Respondent that unless an answer was received by September 11, 2014, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Georgia limited liability company with an office and place of business in Ft. Belvoir, Virginia (the Respondent's facility), has been engaged in providing custodial and cleaning services to the United States Government. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, has provided services to the United States Government in excess of \$50,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

George Brown	Project Manager
Courtney Collins	Owner
Deidre Brown Collins	President and Owner
Annette Pipkins	Human Resources Manager and Owner

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by the Respondent at the Ft. Belvoir location in Virginia.

At all times since September 4, 2012, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement, which was effective from September 4, 2012 to August 1, 2014. At all times since September 4, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about April 11, 2014, the Union requested that the Respondent meet for the purposes of negotiating a successor collective-bargaining agreement with respect to wages, hours, and other terms and conditions of em-

ployment. Since about April 11, 2014, the Respondent has refused to meet and bargain, including by refusing to meet on reasonable dates and at reasonable times, and to meet for in-person negotiations.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by, since about April 11, 2014, refusing to meet and bargain with the Union, including by refusing to meet on reasonable dates and at reasonable times, and to meet for in-person negotiations, we shall order the Respondent, on request, to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit and, if an understanding is reached, to embody the understanding in a signed agreement.¹

ORDER

The National Labor Relations Board orders that the Respondent, Brown & Pipkins, LLC d/b/a Acsential, Fort Belvoir, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively and in good faith with Service Employees International Union, Local 32 BJ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by the Respondent at the Ft. Belvoir location in Virginia.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Ft. Belvoir, Virginia copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 11, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 2, 2014

Mark Gaston Pearce,

Chairman

¹ Member Schiffer observes that, to remedy the Respondent's unlawful failure to meet and bargain with the Union on reasonable dates and at reasonable times, the complaint sought additional remedies requiring the Respondent to: (1) bargain on request within 15 days of a Board Order; (2) bargain on request for a minimum of 15 hours per week until the parties reached an agreement, impasse, or agreed otherwise; (3) prepare and submit to the Region and the Union written bargaining progress reports every 15 days; and (4) make whole employee negotiators for earnings lost while attending bargaining sessions. She would have granted these additional remedies had they been requested in the General Counsel's Motion for Default Judgment.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ACSENTIAL

3

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain collectively and in good faith with Service Employees International Union, Local 32 BJ (the Union) as the exclu-

sive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by us at our Ft. Belvoir location in Virginia.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and put in writing and sign any agreement reached.

BROWN & PIPKINS, LLC D/B/A ACSENTIAL

The Board's decision can be found at www.nlr.gov/case/05-CA-130620 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
BROWN & PIPKINS, LLC D/B/A ACSSENTIAL	:	05-CA-130620
	:	
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Brown & Pipkins, LLC d/b/a Acsential, its officers, agents, successors, and assigns, enforcing its order dated December 2, 2014, in Case No. 05-CA-130620, reported at 361 NLRB No. 105 (2014) and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Brown & Pipkins, LLC d/b/a Acsential, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

NATIONAL LABOR RELATIONS BOARD

v.

BROWN & PIPKINS, LLC D/B/A ACSENTIAL

ORDER

Brown & Pipkins, LLC d/b/a Acsential, Fort Belvoir, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to meet and bargain collectively and in good faith with Service Employees International Union, Local 32 BJ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by the Respondent at the Ft. Belvoir location in Virginia.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.
- (b) Within 14 days after service by the Region, post at its facility in Ft. Belvoir, Virginia copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such

as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 11, 2014.

- (c) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain collectively and in good faith with Service Employees International Union, Local 32 BJ (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by us at our Ft. Belvoir location in Virginia.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and put in writing and sign any agreement reached.

BROWN & PIPKINS, LLC D/B/A ACSENTIAL

The Board's decision can be found at www.nlrb.gov/case/05-CA-130620 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



SERVICE LIST

RESPONDENT:

Deidre F. Brown Collins

Brown & Pipkins, LLC d/b/a Acsential

2950 Stone Hogan Rd, S.W., Bldg 5

Atlanta, GA 30331

NOT PRESENTLY REPRESENTED

Tel: (404) 349-9030

Fax: (404) 349-0042

Email: dfbrown@acsential.com

CHARGING PARTY COUNSEL:

Katy Dunn, Associate General Counsel

SEIU, Local 32BJ

25 West 18th Street

New York, NY 10011-4676

Tel: (212) 388-3970

Fax: (212) 388-2062

E-mail: kdunn@seiu32bj.org

REGIONAL DIRECTOR:

Charles L. Posner, Regional Director

National Labor Relations Board

Bank of America Center, Tower II

100 S. Charles Street, 6th Floor

Baltimore, MD 21201-2700